

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

XAVIER JIMENEZ-BENCEVI,

Defendant.

Criminal No. 12-221 (JAF)



**SPECIAL VERDICT FORM**

**I. AGE OF DEFENDANT**

Instructions: Answer "YES" or "NO"

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that:

Xavier Jiménez-Benceví was eighteen years (18) of age or older at the time of the offenses charged under Counts One and Three of the Superseding Indictment (June 21, 2010)?

YES  X 

NO \_\_\_\_\_

Instructions: If you answered "NO" with respect to the determination in this section, then stop your deliberations, cross out Sections II, III, IV, V, and VI of this form, and proceed to Section VII. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the court that you have reached a decision.

If you answered "YES" with respect to the determination in this Section I, proceed to Section II which follows.

**II. THRESHOLD INTENT FACTORS**

Instructions: For each of the following, answer "YES" or "NO."

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví intentionally killed the victim, Delia Sánchez-Sánchez?

**Count One:** YES  **Count Three:** YES   
NO \_\_\_\_\_ NO \_\_\_\_\_

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví intentionally inflicted serious bodily injury that resulted in the death of the victim, Delia Sánchez-Sánchez?

**Count One:** YES  **Count Three:** YES   
NO \_\_\_\_\_ NO \_\_\_\_\_

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví intentionally participated in an act, contemplating that the life of a person would be taken and/or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and that the victim, Delia Sánchez-Sánchez, died as a result of the act?

**Count One:** YES  **Count Three:** YES   
NO \_\_\_\_\_ NO \_\_\_\_\_

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví intentionally engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Delia Sánchez-Sánchez died as a direct result of the act?

**Count One:** YES  **Count Three:** YES   
NO \_\_\_\_\_ NO \_\_\_\_\_

Instructions: If you answered "NO" with respect to all of the determinations in this section, then stop your deliberations, cross out Sections III, IV, V and VI of this form, and proceed to Section VII. Each juror should carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the court that you have reached a decision.

### **III. STATUTORY AGGRAVATING FACTORS**

Instructions: Answer "YES" or "NO"

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví caused the death or injury resulting in the death of Delia Sánchez-Sánchez during the commission or attempted commission of the offense of attempted kidnapping?

YES   X  

NO \_\_\_\_\_

2. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví was previously convicted of a State offense punishable by a term of imprisonment of more than 1 year, involving the use or attempted or threatened use of a firearm against another person?

YES   X  

NO \_\_\_\_\_

3. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví has previously been convicted of two or more offenses punishable by a term of imprisonment of more than one (1) year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person?

YES   X  

NO \_\_\_\_\_

4. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví committed the offense after substantial planning and premeditation to cause the death of Delia Sánchez-Sánchez?

YES X

NO \_\_\_\_\_

Instructions: If you answered “NO” with respect to all the Statutory Aggravating Factors in this Section III, then stop your deliberations, cross out Sections IV, V, and VI of this form, and proceed to Section VII of this form. Each juror should then carefully read the statement in Section VII, and sign in the appropriate place if the statement accurately reflects the manner in which he or she reached his or her decision. You should then advise the court that you have reached a decision.

If you answered “Yes” in Section I, and “Yes” in Section II, and answered “Yes” with respect to one or more of the aggravating factors in this Section III, proceed to Section IV which follows.

#### **IV. NON-STATUTORY AGGRAVATING FACTORS**

Instructions: Answer “YES” or “NO”

1. Do you, the jury, unanimously find that the government has established beyond a reasonable doubt that Xavier Jiménez-Benceví has participated in a continuous pattern of violent criminal conduct involving the infliction of serious bodily injury or death upon others, including but not limited to, the crimes alleged against the defendant in the Superseding Indictment?

YES X

NO X d

Instructions: Regardless of whether you answered “YES” or “NO” with respect to the Non-Statutory Aggravating Factor in this Section IV, proceed to Section V, which follows.

## V. MITIGATING FACTORS

Instructions: For each of the following mitigating factors, you have the option to indicate, in the space provided, the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence.

A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any one member of the jury who finds the existence of a mitigating factor may consider such a factor established in considering whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established. Further, any juror may also weigh a mitigating factor found by another juror, even if he or she did not initially find that factor to be mitigating:

1. Mr. Jiménez-Benceví was raised, as a child and through his teenage years, as one of fifteen children in a small public housing apartment by a mother who abused her children, both physically and emotionally, and never provided any stability, guidance or motherly love.

Number of Jurors who so find 12

2. Mr. Jiménez-Benceví and his brothers and sisters were locked in the apartment by his mother and the children would cry for help from the neighbors, but the mother would not allow anyone to help.

Number of Jurors who so find 5

3. Mr. Jiménez-Benceví had no father present in his life. When the father was present, he emotionally, physically abused his children, and sexually abused one of his daughters.

Number of Jurors who so find 12

4. Mr. Jiménez-Benceví and his siblings were corrupted by their parents by, for example, being told to steal food and to steal supplies for school.

Number of Jurors who so find 12

5. Due to severe deprivation and no encouragement from his parents, Mr. Jiménez-Benceví never achieved in school, failing the first grade three times, the second grade twice, and the third grade three times. He was ultimately assigned to a vocational school because he was a teenager in the third grade.

Number of Jurors who so find 12

6. Due to his deprivation, inadequate education, and the absence of parental involvement or encouragement, Mr. Jiménez-Benceví did not develop intellectually to his full potential.

Number of Jurors who so find 12

7. The deprivation, abuse, corruption and violence that Mr. Jiménez-Benceví endured while growing up shaped him as an adult.

Number of Jurors who so find 10

8. Despite his deprived childhood, as an older teenager and young adult Mr. Jiménez-Benceví attempted, with his limited skills and intelligence, to hold down law-abiding employment in automobile repair shops.

Number of Jurors who so find 12

9. While incarcerated for over a year at the local federal prison, the Metropolitan Detention Center in Guaynabo, Mr. Jiménez-Benceví has been a model prisoner. He has never been disciplined for violating prison rules.

Number of Jurors who so find 12

10. Mr. Jiménez-Benceví has been a loving father to his son, Chupi.

Number of Jurors who so find 0

11. Any additional mitigating factors proven by a preponderance of the evidence regarding Mr. Jiménez-Benceví's background, record, character, or any other circumstance of the offense that mitigate against the imposition of the death sentence.

[SEE TABLE ON NEXT PAGE]...

<u>Mitigating Factor</u>	<u>Number of Jurors who so find</u>
Additionally living in a problem home 1) he was living in a hostile environment from a sudden change from the Birds housing to a more hostile Fallin Torrencia Working.	9
2) the following Government agencies did not show active involvement	
3) Any corrective action to their inhumane conditions of the family. Housing Department, Department of	
3) Health Department of Family, & Family Prioritization	12
4) Inadequate actions from the Department of Education regarding Xavier Jimenez because specialized educational needs,	12
5) including social workers and related services lack of proper legal actions against both abusive parents	12
7)	
8)	
9)	
10)	
11)	
12)	
13)	

**VI. DETERMINATION**

**Count One:** As to Count One, based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or whether the mitigating factors outweigh the aggravating factors or, in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, and whether death or life in prison without the possibility of release is the appropriate sentence in this case, we determine as follows:

**1. Death Sentence**

We determine, by unanimous vote, that a sentence of death shall be recommended.

YES \_\_\_\_\_

NO X**2. Sentence of Life in Prison Without Possibility of Release**

We determine, by unanimous vote, that a sentence of life imprisonment without the possibility of release shall be recommended.

YES X

NO \_\_\_\_\_

**Count Three:** As to Count Three, based upon consideration of whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or whether the mitigating factors outweigh the aggravating factors or, in the absence of any mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death, and whether death or life in prison without the possibility of release is the appropriate sentence in this case, we determine as follows:

**1. Death Sentence**

We determine, by unanimous vote, that a sentence of death shall be recommended.

YES \_\_\_\_\_

NO X

**2. Sentence of Life in Prison Without Possibility of Release**

We determine, by unanimous vote, that a sentence of life imprisonment without possibility of release shall be recommended.

YES X

NO \_\_\_\_\_

**VII. CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the Defendant, Xavier Jiménez-Benceví, or the victim, Delia Sánchez-Sánchez, was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, or religious beliefs of the defendant or the victim.

**Remember that you are to sign using your juror number, in your own handwriting, in lieu of your signature.**

221  
81  
218  
89  
119  
439  
48

Foreperson

Date: 05/07/13

160  
317  
343  
68  
156